

### **REMARKS/ARGUMENTS**

Claims 33 and 36-41 are pending in this application and stand substantively rejected. Claims 1-32, 34-35, and 42-43 are canceled. In this Amendment, new claims 44-56 are added. Reconsideration of the claims is respectfully requested.

#### **Claim Amendments**

New claims 44-56 are directed to embodiments involving a drug delivery catheter with two conduits, and therefore conform with the Restriction Group II as described in the Restriction Requirement mailed September 27, 2006. Support for these claims can be found in the specification at, for example, page 6, line 5 to page 10, line 19 and Figs. 1-5B. No new matter is introduced.

#### **First Rejection Under 35 U.S.C. §103**

Claims 33 and 36-41 were rejected under 35 U.S.C. §103(a) as allegedly obvious in view of U.S. Patent Publication No. 2001/0029349 to Leschinsky ["Leschinsky"]. This rejection is traversed.

According to MPEP 2141.01(I), "[b]efore answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. §102."

The instant application is a continuation of U.S. Patent Application No. 09/229,390 filed January 11, 1999. The presently pending claims are supported by the parent disclosure. Leschinsky was filed June 13, 2001 and published October 11, 2001. Leschinsky is a continuation-in-part application, and the disclosure content of Leschinsky's priority filing is not known.

Leschinsky was not published before the parent application was filed, and thus cannot qualify as a §102(a) reference. Leschinsky was not published more than one year before the parent application was filed, and thus cannot qualify as a §102(b) reference. Leschinsky was not filed before the parent application was filed, and thus cannot qualify as a §102(e) reference. Because Leschinsky is not prior art under 35 U.S.C. §102, there is no need to proceed to *Graham's* content inquiry. In sum, according to MPEP 2141.01(I), Leschinsky cannot properly

be included in the proposed §103(a) rejection. Withdrawal of this rejection is respectfully requested.

**Second Rejection Under 35 U.S.C. §103**

Claims 33 and 36-41 were rejected under 35 U.S.C. §103(a) as allegedly obvious in view of U.S. Patent No. 6,482,211 to Choi ["Choi"]. This rejection is traversed.

According to MPEP 2141.01(I), "[b]efore answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. §102."

The instant application is a continuation of U.S. Patent Application No. 09/229,390 filed January 11, 1999. The presently pending claims are supported by the parent disclosure. Choi was filed July 31, 2000 and issued November 19, 2002.

Choi was not published before the parent application was filed, and thus cannot qualify as a §102(a) reference. Choi was not published more than one year before the parent application was filed, and thus cannot qualify as a §102(b) reference. Choi was not filed before the parent application was filed, and thus cannot qualify as a §102(e) reference. Because Choi is not prior art under 35 U.S.C. §102, there is no need to proceed to *Graham's* content inquiry. In sum, according to MPEP 2141.01(I), Choi cannot properly be included in the proposed §103(a) rejection. Withdrawal of this rejection is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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